



# Delta Stewardship Council

A CALIFORNIA STATE AGENCY

January 21, 2021

Tri-Valley–San Joaquin Valley Regional Rail Authority  
Attn: Valley Link Draft EIR  
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Sent via email: [drafteircomments@valleylinkrail.com](mailto:drafteircomments@valleylinkrail.com)

## **RE: Comments on Draft Environmental Impact Report for the Valley Link Project (State Clearinghouse No. 2018092027)**

To Whom It May Concern:

Thank you for the opportunity to review and comment on the Draft Environmental Impact Report (DEIR) for the Tri-Valley–San Joaquin Valley Regional Rail Authority (Authority) Valley Link Project (Project). The Delta Stewardship Council (Council) recognizes the objective(s) of the Project, as described in the DEIR, to: improve connectivity within the Northern California Megaregion: connecting housing, people, and jobs; establish rail connectivity between the Bay Area Rapid Transit District's rapid transit system and the Altamont Corridor Express commuter service in the Tri-Valley; pursue project implementation that is fast, cost-effective, and responsive to the goals and objectives of the communities it will serve; be a model of sustainability in the design, construction, and operation of the system; and support the vision of the California State Rail Plan to connect the Northern California Megaregion to the State rail system.

As an independent State of California agency established by the Sacramento-San Joaquin Delta Reform Act of 2009 (SBX7 1; Delta Reform Act), the Council is charged with furthering California's coequal goals for the Delta through the adoption and implementation of the Delta Plan, regulatory portions of which became effective on September 1, 2013.

As stated in the Delta Reform Act, the State has 'coequal goals,' which are to provide a more reliable water supply for California and protect, restore, and enhance the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place" (Water Code section 85054).

Through the Delta Reform Act, the Council was granted specific regulatory and appellate authority over certain actions of State or local public agencies that take place in whole or in

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part in the Delta. To do this, the Delta Plan contains a set of regulatory policies with which State and local agencies are required to comply. The Delta Reform Act specifically established a certification process for compliance with the Delta Plan. This means that State and local agencies that propose to carry out, approve, or fund a qualifying action in whole or in part in the Delta, called a "covered action," must certify that the covered action is consistent with the Delta Plan and must submit a certificate of consistency to the Council that includes detailed findings.

For the purposes of compliance with both the Delta Reform Act and California Environmental Quality Act (CEQA), we offer the following comments for your consideration when preparing the Final Environmental Impact Report (FEIR).

### **Comments on the DEIR**

The following comments address actions outlined in the DEIR related to the Delta Plan.

**Regulatory Setting:** The DEIR lists the Delta Plan in Appendix I, *Regional Plans and Local General Plans* (DEIR Appendix I, p. I-9), which provides a list of applicable goals, policies, and objectives from regional and local plans prepared by agencies with jurisdiction over the Project. The DEIR describes some of the Delta Reform Act goals and objectives that the Delta Plan is responsible for achieving, but does not refer to the Delta Plan or its regulatory policies. The FEIR should identify Delta Plan regulatory policies in the applicable regulatory setting discussions for each resource topic. It is noted that Chapter 3.10 *Hydrology and Water Quality*, does describe the Council and the Delta Plan in the State section of the regulatory setting. The FEIR should also include similar descriptions within the regulatory setting sections of Chapter 3.4 *Biological Resources*, and Chapter 3.11 *Land Use and Planning*.

In Chapter 3.10 *Hydrology and Water Quality* (DEIR, p. 3.10-10 and 3.10-11), under the heading Delta Stewardship Council, the DEIR mentions Delta Plan regulatory policies **RR P3** and **RR P4**. The description of Policy **RR P3** is incomplete as it relates to the Project. Please add the following additional subsection in the FEIR:

(b) For purposes of Water Code section 85057.5(a)(3) and section 5001(j)(1)(E) of this Chapter, this policy covers a proposed action that would encroach in a floodway that is not either a designated floodway or regulated stream.

As presented in the 2016 draft San Joaquin River Basin-Wide Feasibility Study Figure 2-1 *SPFC Facilities in the San Joaquin River Basin* (2010) (Feasibility Study, p. 2-3), Paradise Cut appears to be identified as part of the State Plan of Flood Control under the jurisdiction of the Central Valley Flood Protection Board. As a result, as described in subsection (b) above, Paradise Cut appears to be a designated floodway or regulated stream, and Policy RR P3 would not apply.

In Chapter 3.11 *Land Use and Planning* (DEIR, p. 3.11-6), the Authority acknowledges the Delta Stewardship Council in the environmental setting, however the information provided is incorrect. Please revise Table 3.11-1 in the FEIR to identify the Council's jurisdiction in Tracy in addition to Lathrop, and to identify that the Council is a State agency rather than regional agency.

### **Covered Action Determination and Certification of Consistency with the Delta Plan**

The Council submitted a comment letter on the Notice of Preparation of an Environmental Impact Report (NOP) on October 11, 2018, and an additional comment letter on the Draft Feasibility Study for the Project on July 31, 2019. In those letters (and reiterated below), the Council identifies that the Project appears to meet the definition of a covered action. Water Code section 85057.5(a) states that a covered action is a plan, program, or project, as defined pursuant to Section 21065 of the Public Resources Code that meets all of the following conditions:

1. Will occur in whole or in part within the boundaries of the legal Delta (Water Code, §12220) or Suisun Marsh (Pub. Resources Code, § 29101). The approximate boundaries of these areas are publicly available on the Open Data Portal at <https://data.ca.gov/dataset/legal-delta-boundary> and <https://data.ca.gov/dataset/suisun-marsh-boundary>. *As identified in DEIR Figures 2.12 and 2.13 Valley Link – Full Alignment (DEIR, p. 2-12), the Project would cross into the southwestern portion of the legal Delta and continue east through the City of Tracy and the City of Lathrop. The Downtown Tracy Station, the River Islands Station, and the connecting tracks, bridges, and other infrastructure that comprise the Tracy to Lathrop Alignment (Variants 1 and 2) would be located within the Delta. Several other major project facilities would be located outside of, but in close proximity to the Delta, including the Mountain House Station (and Alternative), the Tracy OMF (and Alternative), and the North Lathrop Station.*
2. Will be carried out, approved, or funded by the State or a local public agency. *The Project would be carried out by the Authority, which is a Joint Powers Authority composed of 15 members representing the Tri-Valley cities, the Central Valley cities, and Bay Area Rapid Transit.*
3. Will have a [significant impact](#) on the achievement of one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta. *The Project is a regional, multi-county transportation project that would have a significant impact on the achievement of the coequal goals to protect, restore, and enhance the Delta ecosystem, as well as the implementation of a government-sponsored flood control program. Table ES-7 in the DEIR Executive Summary (pp. ES-33 through ES-61) identifies significant and unavoidable impacts of the Project with regard to*

*agricultural resources, biological resources, land use and planning, and population and housing.*

4. Is covered by one or more of the regulatory policies contained in the Delta Plan (Cal. Code Regs., tit. 23, §§ 5003-5015). *Delta Plan regulatory policies that may apply to the Project are discussed below.*

Water Code section 85057.5(b) exempts certain activities from the definition of a covered action. A plan, program, project, or activity within the secondary zone of the Delta that the applicable metropolitan planning organization has determined is consistent with a sustainable communities strategy (SCS) is not considered a covered action. Thus, if the San Joaquin Council of Governments (SJCOG) has determined that the Project is consistent with the 2018 SJCOG RTP/SCS, then the project would not meet the definition of a covered action.

The Land Use and Planning section of the Draft EIR states that there are instances in which the Project could be inconsistent with the 2018 SJCOG RTP/SCS (DEIR, p. 3.11-4). Specifically, several project facilities are proposed in locations designated for agricultural use, conflicting with Strategy 1 of the 2018 SJCOG RTP/SCS (DEIR, p. 3.11-4). Therefore, the Project does not appear to be exempt from the definition of a covered action. The Authority may wish to consult with SJCOG regarding a formal determination of consistency with the 2018 SJCOG RTP/SCS.

The Council appreciates that DEIR Table 2-10 lists certification of consistency with the Delta Plan as a potential permit and approval needed for the Project (DEIR, p. 2-40), and that DEIR Table 3.11-2 includes a preliminary analysis of the Project's consistency with several relevant Delta Plan policies (DEIR, p. 3.11-26 to 3.11-27). Council staff looks forward to working with the Authority through early consultation to further refine this preliminary analysis as the Authority prepares to submit a certification of consistency.

As the local agency carrying out the Project, the Authority must determine if the Project is a covered action and, if so, submit a certification of consistency to the Council prior to project implementation. (Wat. Code, § 85225; Cal. Code Regs., tit. 23, § 5001(j)(3).)

### **Comments Regarding Delta Plan Policies**

The following section describes Delta Plan regulatory policies that may apply to the Project based on the available information in the DEIR. This information is offered to assist the Authority to describe the relationship between the Project and the Delta Plan in the FEIR as part of the record supporting the Authority's future certification of consistency.

### **General Policy 1: Detailed Findings to Establish Consistency with the Delta Plan**

Delta Plan Policy **G P1** (Cal. Code Regs., tit. 23, § 5002) specifies what must be addressed in a certification of consistency by a state or local public agency for a project that is a covered

action. The following is a subset of policy requirements which a project shall fulfill to be considered consistent with the Delta Plan:

### **Mitigation Measures**

Delta Plan Policy **G P1(b)(2)** (Cal. Code Regs., tit. 23, § 5002(b)(2)) requires that covered actions that are not exempt from the California Environmental Quality Act (CEQA) must include all applicable feasible mitigation measures adopted and incorporated into the Delta Plan as amended April 26, 2018 (unless the measures are within the exclusive jurisdiction of an agency other than the agency that files the Certification of Consistency), or substitute mitigation measures that the agency finds are equally or more effective. These mitigation measures are identified in Delta Plan Appendix O and are available at: <https://deltacouncil.ca.gov/pdf/delta-plan/2018-appendix-o-mitigation-monitoring-and-reporting-program.pdf>.

The DEIR identifies several potentially significant impacts that require mitigation, including those related to agriculture, air quality, biological resources, land use and planning, noise and vibration, and population and housing. The Authority should review the mitigation measures in Delta Plan Appendix O which correspond to the potentially significant impacts in these resource areas, and ensure that the mitigation measures described in the DEIR are equally or more effective than corresponding mitigation measures in Delta Plan Appendix O. In its certification of consistency for the Project, the Authority should explain how Project mitigation measures are equally or more effective than the applicable mitigation measures contained in Appendix O.

### **Best Available Science**

Delta Plan Policy **G P1(b)(3)** (Cal. Code Regs., tit. 23, § 5002(b)(3)) states that actions subject to Delta Plan regulations must document use of best available science as relevant to the purpose and nature of the project. The Delta Plan defines best available science as “the best scientific information and data for informing management and policy decisions.” (Cal. Code Regs, tit. 23, § 5001 (f).) Best available science is also required to be consistent with the guidelines and criteria in Appendix 1A of the Delta Plan (<https://deltacouncil.ca.gov/pdf/delta-plan/2015-appendix-1a.pdf>).

Six criteria are used to define best available science: relevance, inclusiveness, objectivity, transparency and openness, timeliness, and peer review. The Authority should prepare a certification of consistency that documents the scientific rationale for applying these six criteria to the Project. The certification of consistency should also document how the Project has used best available science related to climate

change and sea level rise that could impact how the Project would need to span and elevate over open waterways, floodplains, and habitat restoration areas.

### **Ecosystem Restoration Policy 3: Protect Opportunities to Restore Habitat**

Delta Plan Policy **ER P3** (Cal. Code Regs., tit. 23, § 5007) states that within the priority habitat restoration areas (PHRAs) depicted in Appendix 5 (available within Delta Plan Appendix B: <https://deltacouncil.ca.gov/pdf/delta-plan/2013-appendix-b-combined.pdf>), significant adverse impacts to the opportunity to restore habitat at appropriate elevations as described in **ER P2** (Cal. Code Regs., tit. 23, § 5006) must be avoided or mitigated. Based on the DEIR Project Description, the Tracy to Lathrop Alignment (Variants 1 and 2) would traverse the Lower San Joaquin River Floodplain PHRA (DEIR, p. 2-12).

The DEIR describes consistency of the Project with Policy **ER P3** in Impact LU-2 (p. 3.11-26), indicating that the Project is consistent with Policy **ER P3** and stating, “See Section 3.4, *Biological Resources*, for a more detailed discussion of potential impacts to habitat and appropriate mitigation measures” (P 3.11-26). Section 3.4 of the Draft EIR identifies 13 impacts to biological resources, but contains no mention of the Delta Plan, Policy **ER P3**, nor the Lower San Joaquin River Floodplain PHRA. Several of the biological resource impacts identify potentially significant impacts to *existing* habitat. However, there is no analysis of impacts to the *opportunity to restore* habitat, as is required by Policy **ER P3**. Therefore, it is unclear how Section 3.4 of the DEIR accounts for Policy **ER P3** requirements. To complete the cross-reference provided in Impact LU-2, Section 3.4 of the FEIR should explain how the Project would avoid or mitigate impacts to the opportunity to restore habitat within the Lower San Joaquin River Floodplain PHRA.

During a February 28, 2019 meeting between Council staff and Authority representatives, the 2017 Central Valley Flood Protection Plan Update <sup>1</sup>(CVFPP Update) was discussed as a State planning effort. The CVFPP Update identified the Paradise Cut bypass project, an integrated habitat restoration and flood system improvement project. The Paradise Cut bypass is and further detailed in the San Joaquin River Basin-Wide Feasibility Study<sup>2</sup> (Feasibility Study). The Paradise Cut bypass would need to be improved and widened to accommodate peak flood stages related to forecasted higher flows with potential climate change impacts as well as the inclusion of restoration planning efforts conducted by the local River Island Development. The Feasibility Study identified the existing Paradise Cut bridge crossing as a constraint for current and future flood control and ecosystem restoration needs in the region.

As described in the DEIR Project Description, the Project proposes a new bridge crossing over the San Joaquin River at Paradise Cut (DEIR, p. 2-15 and 2-16). Two alternatives are

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<sup>1</sup> [https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Flood-Management/Flood-Planning-and-Studies/Central-Valley-Flood-Protection-Plan/Files/2017-CVFPP-Update-FINAL\\_a\\_y19.pdf](https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Flood-Management/Flood-Planning-and-Studies/Central-Valley-Flood-Protection-Plan/Files/2017-CVFPP-Update-FINAL_a_y19.pdf)

<sup>2</sup> <https://water.ca.gov/Programs/Flood-Management/Flood-Planning-and-Studies/Basin-wide-feasibility-studies>

described: a single track with bridge crossings, and a double track with bridge crossings.<sup>3</sup> The Project, with either one or two new bridge crossings over Paradise Cut, should address the current and future flood control and ecosystem restoration needs. Bridge spans that would accommodate future flood and habitat restoration projects for Paradise Cut should provide support for the Project's consistency with Policy **ER P3**. Project Mitigation Measure BIO-8.5 also specifically identifies Paradise Cut as an area where wildlife movement opportunities and riparian habitat restoration could be facilitated through careful consideration of bridge design. Additional detail regarding implementation of Mitigation Measure BIO-8.5 should be provided in the Authority's certification of consistency for Policy **ER P3**.

### **Delta as Place Policy 1: Locate New Urban Development Wisely**

Delta Plan Policy **DP P1** (Cal. Code Regs., tit. 23, § 5010) places certain limits on new urban development within the Delta. As it applies to the Project, Policy **DP P1** states that new residential, commercial, or industrial development must be limited to areas that city or county general plans designate for residential, commercial, and industrial development in cities or their spheres of influence as of the date of the Delta Plan's adoption (May 16, 2013) or areas within the Mountain House General Plan Community Boundary. This policy is intended to strengthen existing Delta communities while protecting farmland and open space, providing land for ecosystem restoration needs, and reducing flood risk.

The DEIR describes consistency of the Project with Policy **DP P1** in Impact LU-2 (DEIR, p. 3.11-26), indicating that the Project is *potentially inconsistent* with Policy **DP P1** because, "The Mountain House Station and West Tracy OMF Alternative would be... developed in areas located beyond current developed areas and would potentially conflict with policies intended to prioritize development within existing communities. The Mountain House Station has the potential to indirectly induce growth to the surrounding areas" (DEIR, p. 3.11-26). Growth-inducing effects are further analyzed and discussed in Chapter 4 of the DEIR. The DEIR finds that Impact LU-2 would be potentially significant because, "the Mountain House Station could potentially result in increased pressures to urbanize agricultural land. This conflict with land use plans and policies for the purpose of avoiding or mitigating an environmental effect is a potentially significant Project impact" (DEIR, p. 3.11-30). The DEIR goes on to note that:

"The Authority considered mitigation to coordinate with San Joaquin County and the City of Tracy to initiate a general plan amendment planning process to address the issues related to population growth in the Mountain House Station area. San Joaquin County and the City of Tracy have exclusive responsibility for land use planning in each respective jurisdiction. Because the Authority has no jurisdiction

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<sup>3</sup> It should be noted that use of the existing UPRR bridge crossings described in the Project NOP does not appear to be an option proposed in the DEIR.

over land use planning within San Joaquin County or the City of Tracy, mitigation to initiate a general plan amendment process is infeasible. For these reasons, mitigation is considered infeasible and the impact of the Mountain House Station would be significant and unavoidable.” (DEIR, p. 3.11-32)

Because the Mountain House Station and West Tracy OMF Alternative are located outside of the boundary of the legal Delta, the conflict with local land use plans does not constitute a direct inconsistency with Policy DP P1. However, the significant growth-inducing effects of the Mountain House Station are concerning because development pressure may cause residential, commercial, or industrial development in nearby agricultural zones within the Delta, thus implicating Policy DP P1. In its certification of consistency for the Project, the Authority should explain whether and how the Project is consistent with Policy DP P1 given the significant growth-inducing effects identified and disclosed for the Mountain House Station. If the Project is determined to be inconsistent with Policy DP P1, the Authority will be required to justify that the Project is consistent with the Delta Plan because, on whole, it is consistent with the coequal goals as required by Delta Plan Policy G P1(b)(1) (Cal. Code Regs., tit. 23, § 5002(b)(1)).

The DEIR does not explicitly discuss the consistency of the Downtown Tracy Station and River Islands Station with Policy **DP P1**. Both stations are located within the Delta. However, Impact LU-2 states that, “A portion of the Downtown Tracy Station would be located in areas zoned for Light Industrial and Central Business District and designated as Downtown. A portion of the River Island Station would be located in areas zoned for and designated Commercial Recreation, Urban Reserve, and Regional Commercial” (DEIR, p. 3.11-31). The FEIR should describe the land use designations of the remaining portions of each site; if portions of these stations would be located in areas designated for agricultural or recreational use, the station locations may be inconsistent with Policy **DP P1**. As Policy **DP P1** references general plan land use designations as of the date of Delta Plan adoption (May 2013), the Authority should be prepared to explain any relevant discrepancies between 2013 land use designations and present-day land use designations in its certification of consistency.

In addition, the Authority should document consideration of comments from local agencies and the Delta Protection Commission regarding the Project’s impacts to land use in its certification of consistency for the Project.

#### **Risk Reduction Policy 4: Floodplain Protection**

Delta Plan Policy **RR P4** (Cal. Code Regs., tit. 23, § 5015) states that no encroachment shall be allowed or constructed in the floodplain areas specified within the regulation – including the Lower San Joaquin River Floodplain Bypass area – unless it can be demonstrated by appropriate analysis that the encroachment will not have a significant adverse impact on floodplain values and functions.



The DEIR describes the consistency of the Project with Policy **RR P4** in Impact LU-2 (DEIR, p. 3.11-27), indicating that the Project is consistent with Policy **RR P4** because, “The Lower San Joaquin River Floodplain Bypass may be modified in the future through the completion of the Proposed Project. Mitigation Measure ... HYD-4.1...would provide mitigation measures to avoid or minimize floodplain encroachment to the maximum extent feasible” (DEIR, p. 3.11-27). Mitigation Measure HYD-4.1 describes how the Project will perform hydrologic and hydraulic studies for project improvements to be located in floodplains, coordinate with regulatory agencies, and obtain required permits. This measure appears to describe a means for the Project to demonstrate consistency with Policy **RR P4**.

The DEIR Project Description identifies construction of a new UPRR bridge across Paradise Cut north of the existing UPRR bridge under either a single- or double-track configuration. (DEIR, pp. 2-15 and 16) In Chapter 3.10 *Hydrology and Water Quality*, the DEIR describes construction activity attributed to constructing a new UPRR bridge and the potential for existing ground disturbance, stating that disturbed areas would be restored to original condition (DEIR, p. 3.10-29). The FEIR should further describe how construction activities would avoid significant adverse impacts on the Paradise Cut bypass floodplain values and functions to provide a record supporting a future certification of consistency.

### **Closing Comments**

The Council invites the Authority to continue engagement with Council staff in early consultation prior to filing a certification of consistency to discuss project elements and mitigation measures that would promote the Project’s consistency with the Delta Plan.

More information on covered actions, early consultation, and the certification process can be found on the Council website at <https://coveredactions.deltacouncil.ca.gov>. Please contact Anthony Navasero at [Anthony.Navasero@deltacouncil.ca.gov](mailto:Anthony.Navasero@deltacouncil.ca.gov) with any questions.

Sincerely,



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